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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 2001-8-15

Issued by the Department of Transportation
on the 15th of August, 2001

Served: August 15, 2001

In the matter of
CERTAIN FOREIGN AIR CARRIERS
foreign air carrier permits under 49 U.S.C. §41301

Docket OST-2001-10416 - /

Applications of
CERTAIN FOREIGN AIR CARRIERS
for renewal of foreign air carrier permits and
exemptions under 49 U.S.C. §41301 and §40109

ORDER TO SHOW CAUSE

Summary

By this order we tentatively find that it is in the public interest to terminate the foreign air carrier permit and/or exemption authorities held by the foreign air carriers listed in the Appendix to this order. We propose to take this action because these carriers have failed to comply with the amended statutory requirements of the Foreign Air Carrier Family Support Act of 1997, 49 U.S.C. 41313. Information available to the Department indicates that all of these foreign carriers are either out of business or no longer conduct any U.S. operations.

Background

The Foreign Air Carrier Family Support Act was originally signed into law on December 16, 1997. The Act added section 41313 to Subtitle VII of Title 49, providing that foreign air carriers transmit to the Secretary and NTSB Chairman a plan for addressing the needs of families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life. The law extended to foreign air carriers the same requirements imposed on U.S. certificated air carriers by 49 U.S.C. §41113 under the Aviation Disaster Family Assistance Act of 1996.

The law required foreign carriers to file plans by June 15, 1998. Not all foreign carriers met this requirement, and on October 1, 1998, we issued Show-Cause Order 98-10-3, proposing to terminate the Department authority of those foreign carriers that did not file required plans. We finalized that tentative decision by Order 99-5-14, and terminated the Department authority of 33 foreign air carriers which had failed to file the required plans.

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) (P.L. 106-181; 114 Stat. 61; April 5, 2000), amended the Foreign Air Carrier Family Support Act of 1997 (49 U.S.C. 41313), to require, among other things, that foreign air carriers submit to the Department and the National Transportation Safety Board, by October 2, 2000, additional assurances for their respective plans to address the needs of families of passengers involved in aircraft accidents.¹ The additional assurances that foreign carriers were to file are described in section 403(a)(1) of AIR-21.

By Notice dated June 8, 2000, the Department's Assistant General Counsel for Aviation Enforcement and Proceedings formally advised foreign carriers of the need for them to file revised Family Support Plans by the October 2, 2000 deadline set forth in AIR-21.

Discussion

At the present time, there are 231 foreign air carriers that hold effective economic authority from the Department under 49 U.S.C. 41301 and/or 40109 to serve the United States, and that were required to file revised plans under the Foreign Air Carrier Family Support Act, as amended.² Of these foreign carriers, 220 have filed their revised plans in Docket OST 98-3304. A total of eleven have not filed plans, and are therefore in violation of 49 U.S.C. 41313, as amended. The identity of these foreign carriers, their homelands, and the specific authority they hold, are summarized in the Appendix to this order.

We are committed to the continued successful implementation of the Foreign Air Carrier Family Support Act, especially in view of the significant benefits it accords the families of victims of aviation disasters. To that end, we have made every effort to advise foreign air carriers of their obligations under the Act, and to assist them in meeting those obligations.

After the October 2, 2000, deadline had passed, Department staff contacted by telephone the listed U.S. counsel or representative of each non-filing foreign carrier, to ascertain why the

¹ AIR-21 required U.S. carriers to submit to the Department and NTSB the same additional assurances that foreign carriers must file.

² By Order 98-1-31, we exempted from the Act's requirements those foreign air carriers which currently hold, or may subsequently receive, Department authority to conduct operations in foreign air transportation using only small aircraft. (The Aviation Disaster Family Assistance Act of 1996 (49 U.S.C. 41113) by statute relieves U.S. small-aircraft operators of the need to file Family Support Plans.)

carrier had not filed its revised plan, and to offer assistance if the carrier had questions concerning its obligations under the amended Act. These efforts resulted in a number of delinquent foreign carriers filing their plans and therefore coming into compliance with the amended Act.

On November 30, 2000, the Department's Assistant General Counsel for Aviation Enforcement and Proceedings sent letters to the remaining foreign air carriers that had not filed plans, notifying them that they were in violation of the amended Act and therefore subject to significant enforcement action. In the interest of obtaining voluntary compliance, the Assistant General Counsel stated that if the carriers submitted their plans within 15 days of the letter's date, his office would close the matter without further enforcement action, but that failure to file within that period could result in immediate enforcement action, and that "continued failure to file the required plan could result in the revocation of your airline's authority to operate." In closing, the Assistant General Counsel again offered the carriers assistance in meeting their obligations under the amended Act.

After the 15-day period noted in the Assistant General Counsel's letter had passed, Department staff notified the listed U.S. counsel or representative of the remaining nonfiling foreign carriers, again offering assistance to those carriers.

As noted above, at present there remain eleven foreign air carriers that were required to file revised plans, but that have not done so.

Tentative Findings and Conclusions

We tentatively find and conclude that the public interest requires that the foreign air carrier permit and/or exemption authority held by these non-filing foreign air carriers be terminated.³ In so doing, we are following the same procedures that we did in the case of those foreign carriers that failed to file initial Family Support Plans in 1998. As we noted in Orders 98-10-3 and 99-5-14, compliance with the Foreign Air Carrier Family Support Act, as amended, is critical to assure that foreign air carriers serving the United States are prepared to address the needs of families of victims of aviation disasters. The continued failure of a foreign air carrier to file the required revised plan, particularly in the face of repeated advisories from the Department that it must do so, constitutes, in our tentative view, grounds for termination of that foreign carrier's authority to serve the United States.

We believe that, as a practical matter, our proposed action will have no disruptive effect on any foreign carrier's actual operations in the U.S. market. It is our understanding that all of

³ Section 41304 of Title 49 provides that we may, after notice and hearing, amend, modify or revoke any foreign air carrier permit issued by the Department if we find that such action is in the public interest. In issuing exemption authorities, including all exemptions at issue in this proceeding, we have reserved the right to amend, modify or revoke those authorities at any time and without hearing.

the nonfiling foreign air carriers are either no longer in business, or no longer conduct any U.S. operations.

We propose to terminate the authority held by the delinquent foreign air carriers by terminating their currently-effective foreign air carrier permits and exemption authorities. In some cases, these permits and/or exemptions have expired by their terms, but remain in effect because the carriers have filed timely renewal applications and have invoked the automatic extension provisions of the Administrative Procedure Act, 5 U.S.C. 558(c), as implemented by 14 CFR Part 377, to keep these permits and/or exemptions in effect. In those instances, we propose to deny those requests for renewal, which will have the effect of terminating the carriers' permit and/or exemption authorities. The type and status of the authority held by the affected carriers are summarized in the Appendix to this order.

As a final matter, we wish to stress that our action is without prejudice to any of the affected foreign air carriers refiling for Department authority, at such time as the carrier is prepared to comply with all requisite statutory and regulatory requirements, including the provisions of the Foreign Air Carrier Family Support Act, as amended.

In view of the foregoing and all facts of record, we tentatively find and conclude that:

1. The foreign air carrier permits and/or exemption authorities listed in the Appendix to this order should be terminated;
2. The applications for renewal of foreign air carrier permits and/or exemption authorities listed in the Appendix to this order should be denied;
3. Our action with respect to exemption authority and applications for renewal of exemption authority should be effective upon issuance of a final order in this proceeding; and
4. Our action with respect to foreign air carrier permits and applications for renewal of foreign air carrier permits should, unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, become effective on the 61st day after its submission for §41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove this portion of the Department's decision under that section, whichever occurs earlier.

ACCORDINGLY,

1. We direct all interested persons to show cause why the tentative decision set forth above should not be made final;

2. Any interested person objecting to the issuance of an order making final our tentative findings and conclusions shall, no later than twenty-one (21) calendar days after the date of service of this order, file with the Department and serve on the persons named and referred to in ordering paragraph 5 below, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence to be relied upon in support of the objections; if objections are filed, answers to objections are due no later than seven (7) calendar days thereafter;⁴
3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;
4. In the event no objections are filed, all further procedural steps shall be deemed waived, and the Department may enter an order which will (subject to Presidential review under §41307 of Title 49 of the U.S. Code, as appropriate) make final our tentative findings and conclusions set forth in this order;
5. We will serve a copy of this order on the foreign air carriers listed in the Appendix to this order; the embassies of the homelands of these carriers in Washington, D.C.; the National Transportation Safety Board; the Federal Aviation Administration; and the Department of State; and
6. We will publish a summary of this order in the Federal Register.

By:

SUSAN MCDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

Appendix

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

⁴ Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

**Current Department Authority Held by Foreign Air Carriers That Have
Failed to File Required Updated Family Support Plans**

Aeronautica de Cancun, S.A. (Mexico), exemption issued by Order 98-4-13 (Docket OST 95-132). The exemption authority remains in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket OST 95-132.

AeroPeru (Peru), foreign air carrier permit issued by Order 89-9-17 (Docket 44689).

Air Alliance, Inc. (Canada), foreign air carrier permit issued by Order 98-5-11 (Docket 50393).

Empresa Ecuatoriana de Aviacion (Ecuador), foreign air carrier permit issued by Order 84-5-32 (Docket 41457). Exemption issued by Notice of Action Taken dated March 22, 1993 (Docket 46708). The exemption authority remains in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket 46708.

Inter-Canadien (1991)/Inter-Canadian (1991) (Canada), exemption issued by Notice of Action Taken dated September 17, 1997 (Docket OST 96-1150). The exemption authority remains in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket OST 96-1150.

Lineas Aereas Mayas, S.A. (Guatemala), foreign air carrier permit issued by Order 89-4-24 (Docket 45001). Exemption issued by Order 95-2-29 (Docket 47631). The permit and exemption authorities remain in effect by virtue of the carrier's filing timely applications for renewal in Dockets 45001 and 47631.

Pacific International Airlines, S.A. (Panama), exemption issued by Order 97-4-9 (Docket OST 97-2232). The exemption authority remains in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket OST 97-2232.

Seagreen Air Transport Limited (Antigua and Barbuda), foreign air carrier permit issued by Order 79-1-125 (Dockets 31006 and 25608). The permit authority remains in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing a timely application for renewal in Docket 41937.

Sobelair N.V./S.A. (Belgium), foreign air carrier permit issued by Order 97-1-8 (Docket OST 96-1261).

Sociedad Ecuatoriana de Transportes Aereos, S.A. (Ecuador), foreign air carrier permit issued by Order 88-5-34 (Docket 45220). Exemptions issued by Notices of Action Taken dated June 29, 1995 (Docket OST 96-1443) and December 23, 1996 (Docket OST 95-786). The exemption authorities remain in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing timely applications for renewal in Dockets OST 96-1443 and 95-786.

Transportes Aereos Ejecutivos, S.A. de C.V. (Mexico), foreign air carrier permit issued by Order 95-3-11. Exemptions issued by Notices of Action Taken dated September 30, 1998 (Docket OST 96-1659) and November 13, 1998 (Docket OST 98-4704). The exemption authorities remain in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing timely applications for renewal in Dockets OST 96-1659 and 98-4704.